

WE WILL NOT cause or attempt to cause Colonial Sand & Stone Co., or any other member of Harbor Carriers of the Port of New York, to discriminate against employees in violation of Section 8(a)(3) of the National Labor Relations Act.

WE WILL NOT in any like or related manner restrain or coerce employees of members of Harbor Carriers of the Port of New York in the exercise of their rights to self-organization, to form, join, or assist any union, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by a lawful agreement requiring membership in a union, as authorized in Section 8(a)(3) of the National Labor Relations Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL make whole Hussein Elgahim for any loss of pay he may have suffered because of our discriminatory action against him.

DECK SCOW CAPTAINS LOCAL 335, UNITED MARINE  
DIVISION, NATIONAL MARITIME UNION, AFL-CIO,  
*Labor Organization.*

Dated----- By-----  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

**Alto Plastics Manufacturing Corporation<sup>1</sup> and Industrial Workers Federation of Labor, Local 886, Petitioner.** *Case No. 21-RC-6819. April 4, 1962*

### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Louis A. Gordon, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>2</sup>

Upon the entire record in this case,<sup>3</sup> the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.<sup>4</sup> At the hearing, the Intervenor alleged that the Petitioner is a "paper union" under the domination of its president and "consultant," that its contracts are "sweetheart contracts" which deprive employees of the benefits of collective bargaining, and that the Petitioner is not a labor organization within the meaning of the Act.<sup>5</sup> In order to pursue these matters, the Intervenor applied

<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The hearing officer's ruling revoking the subpoena issued at the request of the Intervenor is discussed under paragraph 2, *infra*

<sup>3</sup> As the record and briefs adequately present the issues and positions of the parties, the Intervenor's request for oral argument is denied

<sup>4</sup> Local 976, International Union Allied Industrial Workers of America, AFL-CIO, was permitted to intervene on the basis of its existing certification.

<sup>5</sup> Section 2(5) of the Act defines the term "labor organization" as follows:

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which

for a *subpoena duces tecum* directing the Petitioner's president to produce certain records and documents.<sup>6</sup> The hearing officer granted the request for the subpoena but subsequently granted the Petitioner's motion to revoke the subpoena on the ground that the evidence called for was not relevant or material to the issue of the Petitioner's status as a labor organization. The Intervenor excepted to the hearing officer's ruling and urges that it was thereby precluded from establishing that the Petitioner was in fact a "corrupt" union. Reduced to its simplest terms, the Intervenor's ultimate position is that the Board should withhold its processes from the Petitioner because it is a "corrupt" labor union and because such an organization is not a labor organization within the meaning of the Act. The request implicit in the contention is appealing. However, we find no warrant in the statutory scheme to authorize such action.

Under Section 9(c)(1)(A) of the National Labor Relations Act, as amended, a labor organization acting in behalf of a group of employees may file a petition requesting an election. If the Petitioner herein qualifies as a "labor organization," then clearly the Board may not refuse to process its petition. For, it must be remembered that, initially, the Board merely provides the machinery whereby the desires of the employees may be ascertained, and the employees may select a "good" labor organization, a "bad" labor organization, or no labor organization, it being presupposed that employees will intelligently exercise their right to select their bargaining representative. In order to be a labor organization under Section 2(5) of the Act, two things are required: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. If an organization fulfills these two requirements, the fact that it is an ineffectual representative, that its contracts do not secure the same gains that other employees in the area enjoy, that certain of its officers or representatives may have

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exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

<sup>6</sup> The items whose production was required by the subpoena were: (1) the Petitioner's constitution and bylaws; (2) a copy of the LM-1 and LM-2 reports filed by the Petitioner pursuant to title II of the Labor-Management Reporting and Disclosure Act of 1959, hereinafter sometimes called the LMRDA; (3) signed copies of all the collective-bargaining agreements entered into by the Petitioner since its formation; (4) the bonding agreement required under title V of the Labor-Management Reporting and Disclosure Act of 1959 covering the Petitioner's officers, agents, and representatives; (5) the minutes of all the Petitioner's regular, special, and executive board meetings in 1960 and 1961; (6) all documents, including ballots, pertaining to the elections of officers since December 1959; (7) all the correspondence of Anthony J. Doria, Petitioner's "consultant," since December 1959; (8) all documents, including checks, check-stubs, and vouchers, concerning payments to and from Anthony J. Doria since December 1959; (9) copies of all grievances filed on behalf of employees by the Petitioner since December 1959.

criminal records, that there are betrayals of the trust and confidence of the membership, or that its funds are stolen or misused, cannot affect the conclusion which the Act then compels us to reach, namely, that the organization is a labor organization within the meaning of the Act.

The testimony reveals that the Petitioner has a set of bylaws which have been adopted by the general membership of the Union; that these bylaws provide for: (1) elections of officers, stewards, and trustees, by secret ballot; (2) the right to vote on all matters of importance, which vote is final and binding on the Union; and (3) two general membership meetings a year and three or four plant membership meetings a year. The record further shows that, as of the time of the hearing in February 1961, the last general membership meeting was held in September 1960, and the last election was held in March 1960; that there were two plant membership meetings held during the week preceding the hearing; that the Petitioner has collective bargaining contracts with at least five employers; and that the Petitioner has processed grievances for employees.<sup>7</sup> Accordingly, we find that the Petitioner is a labor organization within the meaning of the Act.<sup>8</sup>

The Intervenor's arguments, however, raise some very serious and fundamental issues relating to congressional intent, statutory administration, and Board authority and policy, with respect to which we feel we should comment.

We are acutely aware that testimony delivered before a number of congressional committees during the past 15 years, and most recently before the Senate Select Committee on Improper Activities in the Labor or Management Field (popularly known as the McClellan committee), has brought to light the extent to which some individuals with highly dubious records and connections, and in some cases with the acquiescence or help of employers, have insidiously infiltrated, and gained control over, certain segments of the American labor movement for their own personal gain.<sup>9</sup> We are greatly concerned about the abuses to which some employees have thus been subjected.

In this connection, we are familiar with the findings of the McClellan committee concerning Anthony Doria, "consultant" to the Petitioner herein, who was called before that committee to account for his prior conduct in the discharge of his functions as a union officer.

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<sup>7</sup> In addition, we take official notice of the fact that since 1958, the Petitioner has been certified by the Board as the bargaining representative of employees in at least 10 cases, and has filed unfair labor practice charges in at least 1 case.

<sup>8</sup> *Imperial Reed & Rattan Furniture Co.*, 117 NLRB 495; *Terminal System, Inc., et al.*, 127 NLRB 979; *Inyo Lumber Company*, 129 NLRB 79; *Jat Transportation Corp., et al.*, 128 NLRB 780, 782

<sup>9</sup> See Report of the Select Committee on Improper Practices in the Labor or Management Field, 85th Cong., 2d sess., S. Rept. 1417, p. 621; 86th Cong., 2d sess., S. Rept. 1139, pts. 1-4.

The committee found that Doria "seriously misused his position; defrauded the union's membership, and played a key role in the infiltration of gangsters and racketeers into that union."<sup>10</sup>

It must be remembered, however, that the Board administers a statute, and is duty bound to concern itself solely with those matters which are within the scope of the statute, and to exercise only those powers which Congress invested in the Board. We believe that the matters alleged by the Intervenor in support of its contention are outside the Board's statutory competence and that the Board is therefore without power under the Act to remedy them.<sup>11</sup>

The allegations made by the Intervenor, which it sought to prove through the records and documents it had subpoenaed, concern improper or corrupt practices in the administration of *internal* union affairs. In titles I through VI of the Labor-Management Reporting and Disclosure Act of 1959, Congress expressly dealt with such matters. It is particularly significant that the remedies provided in the LMRDA were given to individual employees directly, and to the public through the intervention of the Secretary of Labor or the Department of Justice. The theory underlying this type of remedial legislation is not to "illegalize" the organization itself, but to afford protection to all parties concerned by creating specific Federal rights and remedies whereby the activities of the organization and its officers and agents are regulated and subjected to judicial review in the vindication of those rights. Had Congress desired to strike directly at the organization itself, Congress would have said so.<sup>12</sup>

Moreover, in *Leedom v. International Union of Mine, Mill and Smelter Workers*, 352 U.S. 145, the Supreme Court held that the Board did not have any implied power to withhold its processes from a union as a remedy for the filing of a false non-Communist affidavit by the union's president under Section 9(h) of the Act, as the only remedy for a violation of that section was the one provided in the Criminal Code. We believe the same rationale is applicable in the instant case. Congress provided certain remedies in the LMRDA for parties aggrieved as a result of unlawful activities in the conduct of internal union affairs. It would be manifestly improper for the Board to fashion a remedy under the National Labor Relations Act which Congress did not see fit to authorize. There is not the slightest indication in the LMRDA that Congress intended to place the regulation

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<sup>10</sup> Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, Rept. No. 1417, p. 221.

<sup>11</sup> Cf. *Nassau and Suffolk Contractors' Association, Inc., etc.*, 118 NLRB 174, 175-176, 185-186

<sup>12</sup> Cf. Subversive Activities Control Act of 1950 (64 Stat. 987, 50 U.S.C. § 781-98), as amended by the Communist Control Act of 1954 (68 Stat. 775, 50 U.S.C. § 781-93), under which a labor organization found to be Communist controlled is ineligible to represent employees or file charges under the National Labor Relations Act, as amended

of internal union affairs within the Board's province. Nor did Congress, in amending the Act, seek to amend it in this respect. On the contrary, Section 603(b) of the LMRDA provides: ". . . nor shall anything contained in [titles I through VI] . . . of this Act be construed to confer any rights, privileges, immunities, or defenses upon employers, or to impair or otherwise affect the rights of any person"<sup>13</sup> under the *National Labor Relations Act, as amended*."<sup>14</sup> [Emphasis supplied.] Thus Congress gave very explicit expression in the law to its intent that the Board should not withhold its procedures or remedies where unions or employers, or their officers or agents, breached the obligations laid down in titles I through VI of the LMRDA.

However, the Board has, on occasion, revoked the certification of a union where it has been shown that the union was not meeting its responsibilities under its certificate as the exclusive bargaining representative. In such cases, the Board has proceeded on the theory that, having issued a certification under Section 9 of the Act, the Board has the power to police and revoke the certification upon good cause shown. Accordingly, in the event the Petitioner should be certified as a result of this election involving employees, and fails to fulfill its statutory obligations as their exclusive bargaining representative, the Board could and would entertain a motion to revoke the certificate.<sup>15</sup>

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

4. The parties agree generally that a production and maintenance unit is appropriate but disagree as to the unit placement of a warehouseman, inspectors, and leadwomen.

The warehouseman unloads and stores materials, moves materials between the warehouse and the production buildings, which are in close proximity, and otherwise performs the customary duties of his classification. He works the same hours and enjoys the same benefits as the production employees.

The inspectors check the quality of the Employer's product and report any defects or substandard work to the chief inspector. They are selected from the production force and must have at least 1 year of experience. They likewise receive the same wages and benefits as the

<sup>13</sup> "Person" as defined in Section 3(d) of the LMRDA includes a labor organization.

<sup>14</sup> We note, also, that a review of the legislative history of the LMRDA reveals a conscious rejection by Congress of proposals [S 748, S. 505, S. 1137; H R 7262, e.g.] which, in effect, would have denied Board access to certain individuals or unions in violation of provisions in titles I to VI. See also Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, pp 405, 408 467-468, 1282-1283

<sup>15</sup> *Larus & Brother Company, Inc.*, 62 NLRB 1075; *The Coleman Company, Inc.*, 101 NLRB 120; *Hughes Tool Company*, 104 NLRB 318; *Pittsburgh Plate Glass Company*, 111 NLRB 1210; *Plant City Welding and Tank Company*, 118 NLRB 280, 282; *A. O. Smith Corporation*, 119 NLRB 621, 622

production workers. The inspectors do not appear to possess any supervisory authority.

The leadwomen are under the production supervisor: 3 leadwomen in assembly each direct the work of 30 to 45 employees at 6 or 7 machines; a leadwoman in salvage directs 8 to 15 employees; a leadwoman in packaging directs 9 employees; and a head leadwoman supervises these 5 leadwomen. The leadwomen, who perform no production work, are responsible for proper job performance, assign work, adjust minor grievances, report rule infractions, recommend discipline, evaluate the work performance of employees on rating forms which affect promotions, and have been told by the Employer that they are supervisors. The recommendation of the head leadwoman as to discharge is given weight and has been followed. Under the chief inspector, a leadwoman, who does no inspection work herself, is in charge of 13 to 14 inspectors. She assigns and transfers them, and makes out the same rating forms as the other leadwomen.

As the interests of the warehouseman and the inspectors are closely allied with those of the production employees, we shall include them in the unit.<sup>16</sup> We find however that the leadwomen are supervisors and we exclude them from the unit. As the record is insufficient to resolve the supervisory status of the warehouse leadman and the leadman mechanic, we shall permit them to vote subject to challenge. As the Employer has no truckdrivers, we do not pass on their unit placement.

Accordingly, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of the Employer at its plant at East Seventh Street, Los Angeles, California, including the warehouse employee, inspectors, and floorladies, but excluding the superintendent, assistant superintendent, maintenance supervisor, production supervisor, chief inspector, leadwomen, the head leadwoman, and all other supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

<sup>16</sup> *Kentucky Rural Electric Cooperative Corporation*, 127 NLRB 887, 889 (warehouseman); *Hevi Duty Electric Company*, 115 NLRB 798 (inspectors).

**Carpenters District Council of St. Louis, AFL-CIO and Vestaglas, Inc.** *Case No. 14-CP-19. April 6, 1962*

#### DECISION AND ORDER

On December 19, 1961, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that 136 NLRB No. 78.